

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WASHINGTON STATE INVESTMENT
BOARD,

Plaintiff,

-against-

ODEBRECHT S.A., et al.,

Defendants.

USDC SDNY
DOCUMENT
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DOC #:
DATE FILED: 10/17/2023

17-CV-8118 (PGG) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

The Court is in receipt of the parties' letters (Dkts. 121, 123, 126) concerning plaintiffs' "contemplated motion to apply collateral estoppel to certain factual findings in *DoubleLine Capital LP, et al. v. Odebrecht Finance, Ltd., et al.*, No. 17-cv-04576-GHW-BCM (S.D.N.Y.)." (Dkt. 121 at 1.) Plaintiff's request is GRANTED to the extent that the Court will conduct a pre-motion conference on **November 6, 2023, at 11:00 a.m.**, in Courtroom 20A, 500 Pearl Street, New York, New York.

At the conference, the parties should be prepared to discuss:

- (1) Whether the contemplated motion will be brought pursuant to Fed. R. Civ. P. 12(f) or some other procedural mechanism;
- (2) Whether the motion is within the scope of my reference (*see* Dkt. 112);
- (3) A proposed schedule for the motion; and
- (4) Whether "nonmutual offensive collateral estoppel" (Dkt. 121 at 2) can be applied where the facts at issue were deemed established in the prior action "for purposes of [that] action" only, *Doubleline Cap. LP v. Odebrecht Fin., Ltd.*, 2022 WL 3029014, at *3, *13 (S.D.N.Y. July 19, 2022); where the order deeming those facts established was issued as a sanction, pursuant to Fed. R. Civ. P. 37(b)(2)(C), for defendants' violation of a specific discovery order, *id.* at *10-11; where no comparable conduct has occurred, to date, in the present action; where no final judgment has been entered in the prior action; and where plaintiff in the present action seeks to apply collateral estoppel for a purpose other than deeming a judgment non-dischargeable in bankruptcy. *See In re Snyder*, 939 F.3d 92, 100 (2d Cir. 2019) (holding that where a default judgment was "entered as a sanction for bad conduct, and the party being estopped had the opportunity to participate in the

underlying litigation, the default judgment has preclusive effect when determining the nondischargeability of a debt in a bankruptcy proceeding"); *Sanders v. Sanders*, 2021 WL 5988343, at *1 (S.D.N.Y. Dec. 17, 2021) (declining, on a motion for reconsideration, to revisit the application of collateral estoppel to a final state court divorce judgment); *cf. Sec. & Exch. Comm'n v. Yin*, 2023 WL 2753094, at *15 (S.D.N.Y. Mar. 31, 2023) (applying the "underlying logic" of *Snyder* to an insider trading claim against a relief defendant), *aff'd sub nom. Sec. & Exch. Comm'n v. Su*, 2023 WL 5970952 (2d Cir. Sept. 14, 2023).

The Clerk of Court is respectfully directed to close the motion at Dkt. 121.

Dated: New York, New York
October 17, 2023

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge